ZAINON SUPPIAN SUPPIAH A

v.

UNIVERSITI MALAYA

HIGH COURT MALAYA, KUALA LUMPUR B
AZMEL MAAMOR J
[CIVIL SUIT NO: S2(S3)-22-599-1997]
29 JANUARY 2007

LABOUR LAW: *Employment - Absence from work - Whether employer* C
entitled to dismiss employee - Employee a bus driver diagnosed with mental illness called paranoid schizophrenia - Not able to carry out his normal duties - No duty assigned to employee since employee too weak to drive a vehicle - Employee absent from work - Employee also absent at D
subsequent disciplinary hearing - Whether dismissal was unfair and unjustified

LABOUR LAW: *Employment - Dismissal - Dismissal of employee for failing to report for work - Employee diagnosed with mental illness called paranoid schizophrenia - Whether employee was present at work or not* E
made no difference at all - Employee not able to carry out his normal duties - No duty assigned to employee since employee too weak - Whether dismissal was unfair and unjustified

The original plaintiff, Suppian Suppiah, was employed by the F
defendant as a bus driver since 1963. On 29 April 1982 he was diagnosed suffering a mental illness called paranoid schizophrenia. The defendant by a letter dated 26 April 1983 asked him to report for duty as a bus driver. Although he was supposed to have been given light duty work, no duty was actually assigned on G
the plaintiff since the plaintiff appeared too weak to drive a vehicle. The plaintiff was later found to be absent from work and disciplinary action was taken against him even though the defendant knew that the plaintiff had still not recovered from the mental illness. The plaintiff was absent at the disciplinary hearing H
and therefore he was dismissed from his services. After recovering from his illness in 1997, the plaintiff filed this action against the defendant seeking for a declaration that he had been unlawfully dismissed from his services. Upon the plaintiff's death on 18 October 1998, the suit was taken over by his personal I
representatives. The issue to be determined was whether the dismissal of the plaintiff by the defendant was fair and reasonable.

Held (allowing the prayers sought by the plaintiff):

(1) The dismissal was unfair and unjustified since at the date the plaintiff was dismissed he had not fully recovered from his mental illness. The plaintiff was not able to think rationally and was not able to carry out his normal duties as an employee. He was in fact given no work at all. Therefore whether he was present there or not did not make any difference at all. Further, in such a mental state the plaintiff was not able to know that he was committing a wrong. (para 5)

(2) The failure on the part of the defendant to tender the medical report of the plaintiff to indicate his mental status to the Disciplinary Committee was a very serious omission. A reasonable Disciplinary Committee would become sympathetic and would be very slow to dismiss the plaintiff outrightly in the light of his mental illness. (para 6)

Legislation referred to:
Limitation Act 1953, s. 24(1)

For the plaintiff - ML Chang; Bar Council Legal Aid Centre Kuala Lumpur
For the defendant - KK Wong (Karen Lee Foong Voon with him)

Reported by Amutha Suppayah

JUDGMENT

Azmel Maamor J:

[1] The original plaintiff, Suppian Suppiah, was employed by the defendant as a bus driver since 1963. On 29 April 1982 he was diagnosed suffering a mental illness called paranoid schizophrenia. He had not fully recovered from that illness. The defendant by a letter dated 26 April 1983 asked him to report for duty as a bus driver. However he was given light duty work supervised by one Balaraman (DW8). It was confirmed by DW8 that he did not assign any duty on the plaintiff. DW8 confirmed that the plaintiff appeared weak and was not in a position to drive a vehicle. As the plaintiff was found to be absent from work disciplinary action was taken against him even though the defendant knew that the plaintiff was still not recovered from the mental illness.

[2] At the disciplinary hearing the plaintiff was absent. So the Disciplinary Committee decided that the plaintiff be dismissed from his services. No appeal to the appeal board was filed by the plaintiff.

[3] After the plaintiff recovered from his illness in 1997 the plaintiff filed this action against the defendant seeking for a declaration that he had been unlawfully dismissed from his services. Unfortunately the plaintiff passed away on 18 October 1998. In view of that the plaintiff's daughter Zainon binti Suppian Suppiah and his widow, Che Pah binti Mat Sari took over this suit as personal representatives of the deceased.

[4] Before dealing with the main issue regarding this case it should be noted the provisions of the Limitation Act 1953 do not apply in the plaintiff's case due to him being incapacitated by reason of him suffering from paranoid schizophrenia. This is clearly provided under s. 24(1) of the said Act.

[5] The only issue to be determined was whether the dismissal of the plaintiff by the defendant on the recommendation of the Disciplinary Committee was fair and reasonable. I arrived at the conclusion that the dismissal was unfair and unjustified on the following reasons:

1. It is my finding that at the date the plaintiff was dismissed he had not fully recovered from his mental illness. This can be confirmed from the report of Dr. Susan Ong dated 26 April 1983, the evidence of DW8 and also the evidence of his widow, Che Pah (PW2);

2. Not having been fully recovered from his mental illness the Plaintiff was not able to think rationally and therefore would not be able to think what is right and what is wrong. As such he was not able to carry out his normal duties as an employee;

3. At the place where he was given light duty under the supervision of DW8, as confirmed by DW8, he was in fact given no work at all. Therefore his presence there would serve no specific purpose. In other words whether he was present there or not it would not make any difference at all. If the intention was merely to instil discipline to the Plaintiff, a mentally sick person forcing him to sit at the place from 8.00 a.m. to 4.30 p.m. doing nothing, it would, in my view, be ridiculously unfair having regard to the serious mental illness that the Plaintiff was suffering. It

would be even more ridiculously unfair and unjust to use his absence from work as the ground to dismiss the Plaintiff from service. In such a mental state the Plaintiff would not be able to know that he was committing a wrong;

4. What I consider to be very serious mistake is the fact that the Disciplinary Committee had omitted to consider a very material fact in that at the time of the disciplinary proceedings the Plaintiff was suffering from a serious mental illness of paranoid schizophrenia and he had not fully recovered from it at the time of the alleged absence from work and also at the time of the disciplinary hearing. The Defendant had in its possession the Plaintiff's medical report prepared by Dr. Susan Ong. Yet that medical report was not tendered before the Disciplinary Committee. This is confirmed by the evidence of a panel member of the Disciplinary Committee. (DW3).

Professor Dr. Ahmad Nawawi bin Hj. Ayob (DW3) under cross-examination stated:

> I cannot remember whether we were told as regards the illness of the patient who was disciplined …
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> I cannot remember whether any medical report of this patient was tendered during the disciplinary hearing. I cannot remember whether condition of the patient's medical condition had been taken when the decision to dismiss him was made. I cannot remember whether at the disciplinary hearing the Board was informed that the patient was suffering from paranoid schizophrenia.

From such statement the court can safely assume that the plaintiff's medical report was not tendered during the disciplinary proceedings. The other two members of the Disciplinary Committee did not give evidence. So the evidence of DW3 which was not challenged must be the true situation of what took place at the disciplinary proceedings.

[6] In my view the failure on the part of the defendant to tender the medical report of the plaintiff to indicate his mental status to the Disciplinary Committee was a very serious omission. It was not a fact which the defendant was not aware of. The defendant had full knowledge but chose not to inform the Disciplinary Committee at the disciplinary proceedings. Had the Disciplinary Committee been appraised that the plaintiff was

suffering from the serious mental illness there would be strong probability that they would not make a decision in the manner they had done against the plaintiff. A reasonable Disciplinary Committee would become sympathetic and would be very slow to dismiss the plaintiff outrightly in the light of his mental illness. It is not his wish to be mentally ill. To dismiss the plaintiff for being absent from work when he was still suffering from paranoid schizophrenia would in my view be exceptionally harsh and unfair and highly unjustified having regard to the fact that the defendant, being an institution of higher learning, is expected to be considerate, fair and compassionate.

[7] In the light of the facts and circumstances of this case I allowed the prayers sought by the plaintiff.

[8] I also declared that the dismissal of the plaintiff was unlawful and unjust. I awarded the plaintiff damages by payment of his full salaries until the date of his death with interest at the rate of 8% p.a. from the date of the filing of this writ to the date of realisation.

[9] I further declared that the plaintiff is also entitled to full pension benefits in accordance with the provisions of the Pension Act 1951.

[10] I also ordered costs to be paid to the plaintiff by the defendant.